

RULE 16.2 COURT ANNEXED MEDIATION

A. General Provisions.

1. *Definitions.* Mediation is a supervised settlement conference presided over by a qualified, certified, and neutral mediator, or anyone else whom the parties agree upon to serve as a mediator, to promote conciliation, compromise, and the ultimate settlement of a civil action.

A certified mediator is an attorney, certified by the chief judge in accordance with these rules, who possesses the unique skills required to facilitate the mediation process, including the ability to suggest alternatives, analyze issues, question perceptions, use logic, conduct private caucuses, stimulate negotiations between opposing sides, and keep order.

The mediation process does not allow for testimony of witnesses. The mediator does not review or rule upon questions of fact or law, or render any final decision in the case. Absent a settlement, the mediator will report to the presiding judge only as to whether the case settled (in full or in part) or was adjourned for further mediation, whether the mediator declared an impasse, and pursuant to Local Rule 16.2.E, whether any party failed to attend the mediation.

2. *Purpose.* It is the purpose of the Court, through adoption and implementation of this rule, to provide an alternative mechanism for the resolution of civil disputes leading to disposition before trial of many civil cases with resultant savings in time and costs to litigants and to the Court, but without sacrificing the quality of justice to be rendered or the right of the litigants to a full trial in the event of an impasse following mediation. Mediation also enables litigants to take control of their dispute and encourages amicable resolution of disputes.

B. Certification; Qualification of Certified Mediators; Compensation of Mediators.

1. *Certification of Mediators.* The chief judge shall certify those persons who are eligible and qualified to serve as mediators under this rule, in such numbers as the chief judge shall deem appropriate. Thereafter, the chief judge shall have complete discretion and authority to withdraw the certification of any mediator at any time.

2. *Lists of Certified Mediators.* Lists of certified mediators shall be maintained in the offices of the Clerk and shall be made available to counsel and the public upon request.

3. *Qualifications of Certified Mediators.* An individual may be certified to serve as a mediator in this district provided that the individual shall have completed a minimum of forty (40) hours in a Florida Circuit Court Mediation Training course certified by the Florida Supreme Court and also: is a former state court judge who presided in a court of general jurisdiction and was also a member of the bar in the state in which he or she presided; or is a retired federal judicial officer; or has been admitted to a State Bar or the Bar of the District of Columbia for at least

ten (10) years and is currently admitted to the Bar of this Court. The advisory committee may recommend for certification an individual to serve as a mediator in this district if it determines that, for exceptional circumstances, an individual who does not otherwise qualify under the terms above should be certified.

Any individual who seeks certification as a mediator shall agree to accept at least two (2) mediation assignments per year in cases where at least one party lacks the ability to compensate the mediator, in which case the mediator's fees shall be reduced accordingly or the mediator shall serve pro bono (if no litigant is able to contribute compensation).

The chief judge shall constitute an advisory committee from lawyers who represent those categories of civil litigants who may utilize the mediation program and lay persons to assist in formulating policy and additional standards relating to the qualification of mediators and the operation of the mediation program and to review applications of prospective mediators and to recommend certification to the chief judge as appropriate.

4. *Standards of Professional Conduct for Mediators.* All individuals who mediate cases pending in this district shall be governed by Standards of Professional Conduct in the Rules adopted by the Supreme Court of Florida for Certified and Court-Appointed Mediators.

5. *Oath Required.* Every certified mediator shall take the oath or affirmation prescribed by 28 U.S.C. § 453 upon qualifying as a mediator.

6. *Disqualification of a Mediator.* Any person selected as a mediator may be disqualified for bias or prejudice as provided in 28 U.S.C. § 144, and shall be disqualified in any case in which such action would be required of a justice, judge, or magistrate judge governed by 28 U.S.C. § 455.

7. *Compensation of Mediators.* Mediators shall be compensated (a) at the rate provided by standing order of the Court, as amended from time to time by the chief judge, if the mediator is appointed by the Court without input or at the request of the parties; or (b) at such rate as may be agreed to in writing by the parties and the mediator, if the mediator is selected by the parties. Absent agreement of the parties to the contrary, the cost of the mediator's services shall be borne equally by the parties to the mediation conference. A mediator shall not negotiate or mediate the waiver or shifting of responsibility for payment of mediation fees from one party to the other. All mediation fees payable under this rule shall be due within forty-five (45) days of invoice and shall be enforceable by the Court upon motion.

C. Types of Cases Subject to Mediation. Unless expressly ordered by the Court, the following types of cases shall not be subject to mediation pursuant to this rule:

1. Habeas corpus cases;
2. Motion to vacate sentence under 28 U.S.C. § 2255;
3. Social Security cases;

4. Civil forfeiture matters;
5. IRS summons enforcement actions;
6. Land condemnation cases;
7. Default proceedings;
8. Student loan cases;
9. Naturalization proceedings filed as civil actions;
10. Statutory interpleader actions;
11. Truth-in-Lending Act cases not brought as class actions;
12. Letters rogatory; and
13. Registration of foreign judgments.

D. Procedures to Refer a Case or Claim to Mediation.

1. *Order of Referral.* In every civil case excepting those listed in Rule 16.2.C., the Court shall enter an order of referral similar in form to the proposed order attached hereto which shall:

(a) Direct mediation be conducted not later than sixty (60) days before the scheduled trial date which shall be established no later than the date of the issuance of the order of referral.

(b) Direct the parties, within fifteen (15) days of the date of the order of referral, to agree upon a mediator. The parties are encouraged to utilize the list of certified mediators established in connection with Rule 16.2.B but may by mutual agreement select any individual as mediator. The parties shall advise the Clerk's office as to such choice within that period of time, failing which the Clerk will designate a mediator from the aforementioned list of certified mediators on a blind random basis.

(c) Direct that, at least ten (10) days prior to the mediation date, each party give the mediator a confidential written summary of the case identifying issues to be resolved.

2. *Coordination of Mediation Conference.* Plaintiff's counsel (or another attorney agreed upon by all counsel of record) shall be responsible for coordinating the mediation conference date and location agreeable to the mediator and all counsel of record.

3. *Stipulation of Counsel.* Any action or claim may be referred to mediation upon stipulation of the parties.

4. *Withdrawal From Mediation.* Any civil action or claim referred to mediation pursuant to this rule may be exempt or withdrawn from mediation by the presiding judge at any time,

before or after reference, upon application of a party and/or determination for any reason that the case is not suitable for mediation.

E. Party Attendance Required. Unless otherwise excused by the presiding judge in writing, all parties, corporate representative, and any other required claims professionals (insurance adjusters, etc.), shall be present at the mediation conference with full authority to negotiate a settlement. If a party to a mediation is a public entity required to conduct its business pursuant to chapter 286, Florida Statutes, and is a defendant or counterclaim defendant in the underlying litigation, that party shall be deemed to appear at a mediation conference by the physical presence of a representative with full authority to negotiate on behalf of the entity and to recommend settlement to the appropriate decision-making body of the entity. The mediator shall report non-attendance and may recommend that the Court enter sanctions for non-attendance. Failure to comply with the attendance or settlement authority requirements may subject a party to sanctions by the Court.

F. Mediation Report; Notice of Settlement; Judgment.

1. *Mediation Report.* Within five (5) days following the mediation conference, the mediator shall file a Mediation Report indicating whether all required parties were present. The report shall also indicate whether the case settled (in full or in part), whether the mediation was adjourned, or whether the mediator declared an impasse.

2. *Notice of Settlement.* In the event that the parties reach an agreement to settle the case or claim, counsel shall promptly notify the Court of the settlement by the filing of a notice of settlement signed by counsel of record within ten (10) days of the mediation conference. Thereafter the parties shall forthwith submit an appropriate pleading concluding the case.

G. Trial Upon Impasse.

1. *Trial Upon Impasse.* If the mediation conference ends in an impasse, the case will be tried as originally scheduled.

2. *Restrictions on the Use of Information Derived During the Mediation Conference.* All proceedings of the mediation shall be confidential and are privileged in all respects. The proceedings may not be reported, recorded, placed into evidence, made known to the trial court or jury, or construed for any purpose as an admission against interest. A party is not bound by anything said or done at the conference, unless a written settlement is reached, in which case only the terms of the settlement are binding.

H. Forms for Use in Mediation.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. _____-CIV-[JUDGE / MAGISTRATE]

CAPTION

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ORDER OF REFERRAL

Trial having been set in this matter for _____, 20 ____, pursuant to Federal Rule of Civil Procedure 16 and Southern District Local Rule 16.2, it is hereby

ORDERED AND ADJUDGED as follows:

1. All parties are required to participate in mediation. The mediation shall be completed no later than sixty (60) days before the scheduled trial date.
2. Plaintiff's counsel, or another attorney agreed upon by all counsel of record and any unrepresented parties, shall be responsible for scheduling the mediation conference. The parties are encouraged to avail themselves of the services of any mediator on the List of Certified Mediators, maintained in the office of the Clerk of this Court, but may select any other mediator. The parties shall agree upon a mediator within fifteen (15) days from the date hereof. If there is no agreement, lead counsel shall promptly notify the Clerk in writing and the Clerk shall designate a mediator from the List of Certified Mediators, which designation shall be made on a blind rotation basis.
3. A place, date and time for mediation convenient to the mediator, counsel of record, and unrepresented parties shall be established. The lead attorney shall complete the form order attached and submit it to the Court.
4. Pursuant to Local Rule 16.2.E, the appearance of counsel and each party or representatives of each party with full authority to enter into a full and complete compromise and settlement is mandatory. If insurance is involved, an adjuster with authority up to the policy limits or the most recent demand, whichever is lower, shall attend.

5. All proceedings of the mediation shall be confidential and privileged.
6. At least ten (10) days prior to the mediation date, each party shall present to the mediator a confidential brief written summary of the case identifying issues to be resolved.
7. The Court may impose sanctions against parties and/or counsel who do not comply with the attendance or settlement authority requirements herein who otherwise violate the terms of this Order. The mediator shall report non-attendance and may recommend imposition of sanctions by the Court for non-attendance.
8. The mediator shall be compensated in accordance with the standing order of the Court entered pursuant to Rule 16.2.B.6, or on such basis as may be agreed to in writing by the parties and the mediator selected by the parties. The cost of mediation shall be shared equally by the parties unless otherwise ordered by the Court. All payments shall be remitted to the mediator within forty-five (45) days of the date of the bill. Notice to the mediator of cancellation or settlement prior to the scheduled mediation conference must be given at least three (3) full business days in advance. Failure to do so will result in imposition of a fee for two hours.
9. If a full or partial settlement is reached in this case, counsel shall promptly notify the Court of the settlement in accordance with Local Rule 16.2.F, by the filing of a notice of settlement signed by counsel of record within ten (10) days of the mediation conference. Thereafter the parties shall forthwith submit an appropriate pleading concluding the case.
10. Within five (5) days following the mediation conference, the mediator shall file a Mediation Report indicating whether all required parties were present. The report shall also indicate whether the case settled (in full or in part), was adjourned, or whether the mediator declared an impasse.
11. If mediation is not conducted, the case may be stricken from the trial calendar, and other sanctions may be imposed.

DONE AND ORDERED this _____ day of _____, 20____.

U.S. District Judge

Copies furnished:
All counsel of record

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. _____-CIV- [JUDGE / MAGISTRATE]

CAPTION

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ORDER SCHEDULING MEDIATION

The mediation conference in this matter shall be held with _____ on
_____, 20____, at _____(am/pm) at _____, Florida.

ENTERED this _____ day of _____, 20____.

U.S. District Judge

Copies furnished:
All counsel of record

Effective Dec. 1, 1994; amended effective April 15, 1996; April 15, 1997; April 15, 1999; April 15, 2004; April 15, 2005.

Comments

(1996)[B.3(c).] Deletion of reference to Trial Bar to conform to new Local Rules 1 through 4 of the Special Rules Governing the Admission and Practice of Attorneys, effective January 1, 1996.

(1997)[C.] Letters rogatory and registrations of foreign judgment made exempt from mediation requirements as unnecessary.

[E.] Florida's "Government in the Sunshine" Law, Florida Statutes § 286.011, as incorporated into the Florida Government Cooperation Act, Florida Statutes § 164.106, does not permit public entities to settle litigation against them without a public hearing preceded by due public notice. Public entities have therefore at times found themselves unable to comply with Local Rule 16.2.E. and have had to seek an exception from the rule in order to permit mediation. This amendment relaxes the requirement that parties be present with full authority to consummate a settlement where a public entity is a defendant, and provides instead that a representative be present who can negotiate settlement on the entity's behalf and recommend settlement to the entity.

(1999) [B.6] Language is added to clarify that mediators appointed by the Court without input by the parties are compensated at the rate set by the standing administrative order.

(2005) [B.3 and B.4] In addition to the requirement of completing the forty (40) hour Florida Supreme Court Circuit Court mediation training course, a mediator will now also be governed by the Florida Rules for Certified and Court-Appointed Mediators Standards of Professional Conduct, which provide ethical standards of conduct for certified and court appointed mediators and incorporate procedures for the discipline and/or suspension of certified mediators or non-certified mediators appointed to mediate a case pursuant to Court rules. The purpose of these rules of discipline, specifically under Part III, is to provide a means for enforcing the ethical requirements set forth therein.

[B.7] This revision is intended to prevent the parties from using mediator fees as a negotiating wedge. The mediator is now prohibited from engaging in fee shifting negotiations. In addition, a provision was added to assist the Court in enforcing payment of mediation fees.

[C.] This revision expands the types of cases subject to mediation based on experience demonstrating the effectiveness of mediation in resolving disputes.

[F.1] Under the Florida Rules for Certified and Court-Appointed Mediators, now adopted by these rules, a mediator, pursuant to Rule 10.420(b) *shall* adjourn the mediation under any of five (5) specified circumstances, four (4) of which do not require the parties' consent.

[G.2] This revision makes "all proceedings" of the mediation confidential, leaving no room for misinterpretation of the definition of what is considered to be confidential. It is intended to broaden the confidentiality provision.